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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MICHELLE DAVIS; NICOLE
JOHNSON, CLAUDIA ARIZA,

Plaintiffs,

v.

CITY OF SAN DIEGO, a municipal
corporation; CHRISTOPHER R. HAYS,

Defendants.

) Case No. 14cv1488 DMS (DHB)

) **JOINT MOTION FOR STAY**
) **PENDING CRIMINAL TRIAL AND**
) **DEPARTMENT OF JUSTICE**
) **INVESTIGATION OF**
) **DEFENDANT CHRISTOPHER R.**
) **HAYS**

) Magis.: Hon. Dana M. Sabraw
) Ctrm: 13A
) Trial: Not Set

The parties, through this joint motion, by and through their respective counsel, and pursuant to CivLR 12.1, request that this Court stay this civil action pending the outcome of Defendant Christopher Hays' criminal trial and the Department of Justice's ("DOJ") investigation of Christopher Hays.

1 Good cause exists to stay the civil action until the conclusion of Hays'
2 criminal trial and the DOJ's investigation of Hays for the following reasons:

3 1. WHEREAS Defendant Christopher Hays is being criminally
4 prosecuted by the San Diego County District Attorney's Office and is being
5 investigated by the U.S. Department of Justice, the parties acknowledge
6 Christopher Hays' fifth amendment privilege against self-incrimination is fully
7 implicated in this civil matter. *Keating v. Office of Thrift Supervision*, 45 F.3d 322,
8 324 (9th Cir. 1995). Thus, Defendant Hays cannot admit or deny the facts in
9 Plaintiffs' Complaint, and must exercise his fifth amendment privilege regarding
10 Plaintiffs' claims;

11 2. WHEREAS the criminal trial of Defendant Hays is set for
12 November 12, 2014;

13 3. WHEREAS it is anticipated that the review of the San Diego Police
14 Department, including the claims against Defendant Hays, by the Department of
15 Justice will be completed by approximately December 2014, with another 60 to 90
16 days to complete the investigation report, especially given the holidays;

17 4. WHEREAS the parties acknowledge the Plaintiffs have an interest in
18 proceeding expeditiously with this litigation, the parties also acknowledge their
19 belief that once the criminal trial and DOJ's investigation of Hays are complete, the
20 parties are in a better position to respond to the Plaintiffs' allegations, conduct
21 discovery, and potentially negotiate a resolution of this action; furthermore, the
22 anticipated delay is only expected through December of 2014, which the parties
23 acknowledge is reasonable given the circumstances; *Keating*, 45 F.3d at 325;

24 5. WHEREAS the parties also acknowledge there is great prejudice to
25 Defendant Hays by forcing him to exercise his fifth amendment privilege with
26 regard to Plaintiffs' claims herein, and to Defendant City by its inability to proffer
27 the testimony of a key witness to the allegations alleged in the Complaint, *Id.*;

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1 6. WHEREAS the parties believe that the Court, in its management of its
2 cases, would exercise efficient use of its judicial resources by postponing the dates
3 in this civil action, especially the Early Neutral Evaluation Conference wherein the
4 parties could negotiate the merits of the case fairly and on the merits, as opposed to
5 numerous contingencies to be decided in the criminal trial(s) of Hays, *Id.*;

6 7. WHEREAS the attorneys in this civil action were also attorneys in
7 several of the Anthony Arevalos cases with a history of zealous and ethical
8 advocacy for their respective clients, which resulted in fair settlements without the
9 need for protracted judicial intervention, because the parties were able to negotiate
10 based upon the merits of those cases, i.e., after Arevalos was criminally convicted;

11 8. WHEREAS the stay would not interfere with any interest of any
12 person(s) not parties to this civil litigation, as the Defendants have not yet
13 responded to the Complaint; *Id.*

14 9. WHEREAS the interest of the public in seeing the resolution of the
15 criminal allegations is not being interrupted by the stay because the criminal case is
16 continuing, as well as the DOJ's investigation. *Id.* Furthermore, the parties
17 acknowledge that Defendant Hays is not a "danger to the public", as he is no longer
18 employed by the San Diego Police Department;

19 10. The parties acknowledge the factors to be balanced as articulated in
20 *Keating*, 45 F.3d at 325, weigh in favor of a stay of this civil action.

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Accordingly, the parties respectfully request that the Court stay this civil action until the conclusion of Defendant Hays' criminal trial, and until the DOJ investigation is complete. Further, the parties respectfully request the Court set a status conference for some time in December 2014.

I, Keith Phillips, certify that I have made a true and correct copy of this pleading available to counsel for the Plaintiffs, James C. Mitchell, and counsel for Co-Defendant Christopher Hays, Kevin M. Osterberg, who have both authorized me to electronically sign this pleading on their behalf according to the Electronic Case Filing Administrative Policies and Procedures Manual for the United States District Court for the Southern District of California § 2(f)(4).

STIPULATED TO BY ALL PARTIES:

Dated: August 15, 2014

JAN I. GOLDSMITH, City Attorney

By /s/ KEITH W. PHILLIPS

Keith W. Phillips

Deputy City Attorney

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Attorneys for Defendant City of San Diego

Dated: August 15, 2014

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Dated: August 15, 2014

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